



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Marvin Hall, Commissioner
Fire Insurance Division
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Attention: Mr. Albert Boggess, Jr.

Opinion No. O-5744

Re: Whether direct salaried salesmen
or direct salaried employees of
reciprocal or inter-insurance
exchanges whose principal work
is solicitation of insurance from
the public generally, are required
to be licensed under Articles 5035
and 5062b of Vernon's Annotated
Civil Statutes.

Your letter of December 1, 1943, requesting the opinion
of this department on the question stated therein reads as fol-
lows:

"The Federal Underwriters, a reciprocal exchange,
has refused to secure licenses for their salaried sales-
men and representatives or employees whose work mainly
consists of soliciting insurance from the public gener-
ally. They claim that such employees of a reciprocal
exchange are exempt from securing licenses.

"We have had numerous complaints because such above
described representatives solicit and sell insurance
without being subject to the same regulations and re-
quirements as prescribed by law for other insurance
agents. It has been our practice to require representa-
tives of a reciprocal exchange who solicit and sell in-
surance to the public generally to be licensed under
Article 5062B.

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"In 1939, there arose the question of licensing representatives of Lloyds. In this case, the representatives were designated as deputy attorneys-in-fact, and they claimed exemption from being licensed. This question was submitted to you, and Opinion No. O-1010 was rendered on June 27, 1939 that such deputy attorneys-in-fact were required to be licensed.

"In considering this question, we respectfully direct your attention to an opinion written in 1931, a copy of which is hereto attached. We also invite your consideration of Article 5055, Revised Statutes, and Article 572, Penal Code. It is our practice to issue a certificate for agents who do not solicit from the public generally but whose principal duties are overseeing and supervising the activities of agents soliciting from the public generally as outlined in Article 5055.

"Therefore, we submit the following question:

"Are direct salaried salesmen or direct salaried employees of reciprocal or inter-insurance exchanges whose principal work is solicitation of insurance from the public generally, required to be licensed as provided under Articles 5055 and 5062B, of the Revised Civil Statutes of Texas?"

Article 5055, Vernon's Annotated Civil Statutes, provides:

"It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this State or out of it, without first procuring a certificate of authority from the Commissioner."

Article 572 of Vernon's Annotated Penal Code, makes it a penal offense for any individual to solicit insurance in behalf of any insurance company without a certificate of authority to

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act as agent or solicitor for such company, or after such certificate of authority shall have been cancelled or revoked.

Article 5056, Vernon's Annotated Civil Statutes, provides in effect that any person who solicits insurance on behalf of any insurance company is an agent of the company. Generally speaking, the substantial provisions of Article 5056 are contained in Article 568, Vernon's Annotated Penal Code.

Section 2 of Article 5062b, Vernon's Annotated Civil Statutes, among other things, defines the terms "local recording agent" and "solicitor." Section 4 of said statute provides:

"It shall be unlawful for any person or firm or partnership to act as a Local Recording Agent or Solicitor in procuring business for any Insurance Company, corporation, inter-insurance, exchange, Mutual, Reciprocal, Association, Lloyds or other Insurance Carrier, until he shall have in force the license provided for herein."

Section 20 of said statute (5062b) provides:

"No provision of this act shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

"(a) any actual full-time home office or salaried traveling representatives of any Insurance Carrier licensed to do business in Texas.

"(b) any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or inter-insurance exchange admitted to do business in Texas.

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In view of the specific exemption contained in Section 20, as quoted above, it is our opinion that Article 5055, Vernon's Annotated Civil Statutes, and Article 572, Vernon's Annotated Penal Code, have no application to the question under consideration. It is our further opinion that in view of said Section 20 the salaried salesmen or salaried employees of reciprocal or inter-insurance exchanges are not subject to Section 4 of Article 5062b although their principal work is soliciting insurance from the public generally. Stated another way, it is our opinion that Section 20 expressly exempts from the provisions of the foregoing statutes those persons named in subsection (a) and subsection (b) of Section 20 of said article. Therefore, the question as quoted above, is respectfully answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

APPROVED DEC 20, 1943

George S. Sullivan
GEORGE SULLIVAN
CLERK GENERAL

AK:BP

6-23-43

